CHIN CHOY & ORS. v. THE COLLECTOR OF STAMP DUTIES

[O.C.J. (Abdul Hamid J.) June 3, 1977]
[Kuala Lumpur — Originating Motion No. 62 of 1973]

Stamp Duty — Assessment — Market value — Effective date — Date of agreement of sale or of execution of transfer — Stamp Ordinance, 1949, ss. 12A and 59.

The question in this case related to the assessment of the *ad valorem* duty on the transfer of property. The property in question was agreed to be sold in October 1971 but the transfer was executed in June 1973. The valuation officer valued the property as at the date of the execution of the transfer. It was argued that the *ad valorem* duty payable on the instrument of transfer should be based either on the money value mentioned in the instrument of transfer or the market value on the date of the sale and purchase agreement and not on the date of the execution of the instrument of transfer.

Held: in the light of section 12A of the Stamp Ordinance the market value of the property is that on the date of the execution of the transfer, not the date of the sale and purchase agreement and therefore the Collector in this case had made a proper assessment of the duty.

ORIGINATING MOTION.

P.S. Gill for appellants.

Abdul Rashid Munaf for the Collector of Stamp Duties/respondent.

Abdul Hamid J.: This is a case stated pursuant to section 39 of the Stamp Ordinance No. 59 of 1949 seeking the court's opinion in regard to assessment of ad valorem duty upon transfer of property.

The facts in so far as they are pertinent to the determination of the question raised are as follows: —

On or about October 30, 1971 Bolton Properties Sendirian Berhad (I shall call "the developer") entered into a sale and purchase agreement with one Chia Ah Kow (I shall call "the purchaser) whereby the developer agreed to sell and the purchaser to buy a portion of the developer's land as set out in the agreement consequent upon the application made by the purchaser for the purchase of a two-storey shop on the land in question. The purchaser paid a sum of $25,500 to account of the total purchase price of $49,000 as consideration for the developer agreeing to sell and transfer to the purchaser the said land subject to certain specified conditions one of which was in regard to the payment of the balance of the purchase price.

On June 26, 1973 a memorandum of transfer was executed between the developer and the purchaser. The instrument of transfer together with a copy of the agreement and stamp duty section 5 questionnaire were presented to the Collector of Stamp Duties. The value of the property under the instrument of transfer was $49,000 being the agreed purchase price and a sum of $490 being ad valorem duty based at 1% of the purchase price and a further $1 being adjudication fee were paid. The valuation officer valued the said property as at the date of the execution of the instrument of transfer at $65,000. Based on the valuation report the Collector assessed the market value for purposes of stamping and imposed ad valorem duty of $650.

The purchaser is dissatisfied with the assessment and has contended that the ad valorem duty payable on the instrument of transfer should be based either on the money value mentioned in the instrument of transfer or the market value on the date of the sale and purchase agreement and not on the date of the execution of the instrument of transfer. Encik P.S. Gill appearing on behalf of the purchaser put in a lengthy submission. With respect I find that most of the matters stated therein are not really pertinent to the question that calls for the determination by this court.

The question is essentially one of interpretation of section 12A of the Stamp Ordinance as amended by the Stamp (Amendment) Act No. 60 of 1967 which reads —

"12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be —

(a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement; or

(b) the market value, as on the date of execution, of the property transferred or settled,

whichever be the greater:

Provided that the officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned therein as being the market value, unless he shall have reason to believe otherwise."

If one should pause to read the section carefully one would find that the section clearly provides that for purposes of assessment of the value of the property the Collector shall have to have regard to the property subject of a transfer in an instrument of transfer. This is apparent from paragraph (a) of section 12A which speaks of money value mentioned in the *instrument of transfer*, the emphasis is mine. Furthermore paragraph (b) of section 12A speaks specifically of date of execution of the property transferred which evidently must relate to the date of execution of the instrument of transfer. In the light of the provisions of section 12A I am unable to see how it can be successfully argued that the market value, if assessed, should be the market value on the date of sale and purchase agreement.

To my mind there is no ambiguity in the wording of section 12A and therefore it is not open to construction that the market value, if assessed, should be on the basis of the market value of the property at the date of an agreement to sell and transfer. For this reason I hold that the Collector had made proper assessment in compliance with section 12A of the Ordinance.

I order that the costs of this application be paid by the applicants to the Collector of Stamp Duties.

Order accordingly.

Solicitors: *Gill & Tang.*